

No. 15839

United States
Court of Appeals
for the Ninth Circuit

ALDO CERATI,

Appellant,

vs.

BRUCE G. BARBER, District Director, Immigration
and Naturalization Service,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED
JAN 22 1958

PAUL P. H. T. SM. CLERK

No. 15839

United States
Court of Appeals
for the Ninth Circuit

ALDO CERATI,

Appellant,

vs.

BRUCE G. BARBER, District Director, Immigration
and Naturalization Service,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

1902-1903

...

...

...

...

...

...

...

...

...

...

...

...

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Bond for Costs.....	37
Certificate of Clerk.....	40
Designation of Record.....	42
Findings of Fact, Conclusions of Law, Recommendation, etc.	10
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	39
Order Denying Petition.....	34
Petition for Naturalization.....	3
Statement of Points on Appeal.....	43
Stipulation	30

NAMES AND ADDRESSES OF COUNSEL

JOSEPH S. HERTOGS, ESQ.,
MESSRS. JACKSON & HERTOGS,

Attorneys at Law,

580 Washington Street,

San Francisco, California,

For Appellant.

LLOYD H. BURKE, ESQ.,

United States Attorney;

C. ELMER COLLETT,

Asst. U. S. Attorney,

Post Office Building,

San Francisco, California,

For Appellee.

United States Department of Justice,
Immigration and Naturalization Service

Original—(To be retained by Clerk of Court)

United States of America

PETITION FOR NATURALIZATION

General Provisions

No. 128368

To the Honorable the District Court of the United
States, San Francisco, Calif.

This petition for naturalization, hereby made and
filed, respectfully shows:

(1) My full, true, and correct name is: Aldo
Cerati.

(2) My present place of residence is Spl. Serve.
Dept., U. S. Naval Station, Treasure Isl., San Fran-
cisco, Calif., U. S. Navy.

(4) I was born on June 8, 1935, in Novara, Italy.

(5) My personal description is as follows: Sex,
Male; complexion, Fair; color of eyes, Blue; color of
hair, Brown; height, 5 feet 9 inches; weight, 145
pounds; visible distinctive marks, Small scar back
left wrist; country of which I am a citizen, subject,
or national, Italy.

(6) I am not married.

(7a) (If petition is filed under section 319(a),
Immigration and Nationality Act.) I have resided
in the United States in marital union with my

United States citizen spouse for at least 3 years immediately preceding the date of filing this petition for naturalization, and have been physically present in the United States at least half of that time.

(7b) (If petition is filed under section 319(b), Immigration and Nationality Act.) My husband or wife is a citizen of the United States, is in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General of the United States, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or subsidiary thereof or of a public international organization in which the United States participates; and such husband or wife is regularly stationed abroad in such employment. I intend in good faith upon naturalization to live abroad with my spouse and to resume my residence within the United States immediately upon termination of such employment abroad.

(8) I have no children.

(9) My lawful admission for permanent residence in the United States was at Miami, Florida, under the name of Aldo Cerati (formerly Aldo Cavallo), on August 2, 1951, on the PAA Flt No. 412.

(10) Since my lawful admission for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer.

(11) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen.

(12) It is my intention to reside permanently in the United States.

(13) I am not and have not been for a period of at least 10 years immediately preceding the date of this petition a member of or affiliated with any organization proscribed by the Immigration and Nationality Act or any section, subsidiary, branch affiliate or subdivision thereof nor have I during such period engaged in or performed any of the acts or activities prohibited by that Act.

(14) I am able to read, write and speak the English language (unless exempted therefrom).

(15) I am, and have been during all the periods required by law, a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. I am willing, if required by law, to bear arms on behalf of the United States, to perform noncombatant service in the Armed Forces of the United States, and to perform work of national importance under civilian direction (unless exempted therefrom).

(16) I have resided continuously in the United States since August 2, 1951, and continuously in the

State in which this petition is made for the term of 6 months at least immediately preceding the date of this petition and I have been physically present in the United States for at least one-half of the 5-year period immediately preceding the date of this petition.

(17) I have not heretofore made petition for naturalization.

(18) Attached hereto and made a part of this, my petition for naturalization, are the affidavits of at least two verifying witnesses required by law.

(19) Wherefore I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America.

I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, and that the same are true to the best of my knowledge and belief, and that this petition is signed by me with my full, true name: So Help Me God.

Alien Registration No. A8079012.

/s/ ALDO CERATI,

(Full, true, and correct signature of petitioner, without abbreviation.)

Affidavit of Witnesses

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

(1) My name is Edward Lewis, my occupation is U. S. Navy. I reside at 1231 Grove Street, San Francisco, California, and

(2) My name is Herbert H. Bessner, my occupation is Administrative Assistant. I reside at 2108 $\frac{1}{2}$ Byron Street, Berkeley, California.

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with the petitioner named in the petition for naturalization of which this affidavit is a part, since at least June, 1956; to my personal knowledge the petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date last mentioned; that the petitioner has been physically present in the United States for at least 6 months of that period; and that the petitioner has been a resident in the State in which the petition is filed during at least the last 6 months. I have personal knowledge that the petitioner is, and during all such periods has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in the affidavit to this petition for naturalization subscribed by me are true to the best of my knowledge and belief: So Help Me God.

/s/ EDWARD LEWIS,
 (Signature of Witness.)

/s/ HERBERT H. BESSNER,
 (Signature of Witness.)

Subscribed and sworn to (affirmed) before me by above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit at San Francisco, California, this 6th day of February, A.D. 1957.

/s/ J. S. HEMMER,
 Designated Examiner.

I hereby certify that the foregoing petition for naturalization was by petitioner named herein filed in the office of the clerk of said court at San Francisco, California, this 6th day of February A.D. 1957.

[Seal] C. W. CALBREATH,
 Clerk;

/s/ DOROTHY EDINGER,
 For the Clerk.

Oath of Allegiance

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty of whom or which I have heretofore been a

subject or citizen; that I will support and defend the Constitution and the laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same;

that I will bear arms on behalf of the United States when required by the law;

that I will perform noncombatant service in the Armed Forces of the United States when required by law;

that I will perform work of national importance under civilian direction when required by the law;

and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God. In acknowledgement whereof I have hereunto affixed my signature.

/s/ ALDO CERATI,

(Signature of Petitioner.)

Sworn to (affirmed) in open court, this .. day of
..... A.D. 19...

C. W. CALBREATH,
Clerk.

Petition denied: List no. Sept. 25, 1957.

In the District Court of the United States in and for the Northern District of California, Southern Division at San Francisco, California.

Petition No. 128368

Petition for Naturalization of ALDO CERATI.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION OF DESIGNATED NATURALIZATION EXAMINER

To the Honorable, the Judges of the District Court of the United States in and for the Northern District of California, Southern Division:

1. The undersigned, duly designated under the Immigration and Nationality Act of 1952, to conduct preliminary examinations upon petitions for naturalization, respectfully submits that this petitioner, age 21 years, a native and citizen of Italy, and who has resided in the United States since his admission to the United States for permanent residence on August 2, 1951, filed this petition for naturalization under the General Provisions of the Immigration and Nationality Act of 1952, on February 6, 1957.

Issue:

Whether the Petitioner Is Eligible for Naturalization in View of the Provisions of Section 315 of the Immigration and Nationality Act of 1952, He Having Applied for and Been Granted Exemption From Military Service Because of Alienage.

2. Statement of Facts

Petitioner was born on June 8, 1935, at Novara, Italy. He first came to the United States on April 23, 1950, in a temporary status as a student. He remained here in that status until July 1, 1951. He was readmitted to the United States at Miami, Florida, on August 21, 1951, for permanent residence, being 16 years of age at that time.

On attaining his 18th birthday or within five days thereafter, he became subject to registration for the draft under the Universal Military Training and Service Act (50 U.S.C.A., Sec. 454), in accordance with the terms of Presidential Proclamation No. 2799, of July 20, 1948 (13 F.R. 4173), which pertinently provided that "(j) Persons who were born on or after September 19, 1930, should be registered on the day they attain the eighteenth anniversary of the day of their birth, or within five days thereafter." This would be within 5 days of June 8, 1953, or at the latest June 13, 1953.

Petitioner did not register until June 9, 1954. The reasons given for his delinquency are several—(1) Petitioner has stated that he consulted the Italian Consul at San Francisco, California, and was told by them that he had nothing to worry about until he attained his 20th birthday and that then he was to consult with the Consul at that time; (2) Petitioner alleges that he did not know of the draft until some of his school friends who were nearing their eighteenth birthday talked about the draft and about going into the Armed Forces; (3) Petitioner alleges

that in early June of 1954, he had contacted the Sacramento office of the Immigration and Naturalization Service in re the procuring of a re-entry permit in connection with a contemplated trip outside of the United States. He was informed by the Service that he would have to secure permission of the Draft Board before leaving the United States. He alleges that this was the first time he became aware that he was subject to draft registration.

Whatever the reason might have been, when he did appear to register he was reported to the U. S. Attorney's Office as delinquent. Investigation followed and when all of the facts were presented to the U. S. Attorney, he declined prosecution when the petitioner indicated that he accepted immediate induction. On June 19, 1954, he contacted his draft board and signed a request for immediate induction. After physical examination, he was advised on August 17, 1954, by his draft board that he was found acceptable for military service. On August 24, 1954, the petitioner with his stepfather, Charles N. Cerati, appeared at his draft board and presented two written requests for deferment until December 1, 1954, on the grounds that the petitioner was an indispensable employee of his father's business. They were informed that inasmuch as petitioner was being processed as a delinquent, the draft board could not grant any deferment. Petitioner and his stepfather thereupon requested an appeal.

On August 25, 1954, when the facts were presented to the U. S. Attorney, he requested the draft board

to induct subject immediately as a delinquent. The same day the draft board directed an order to the petitioner to report for induction as a delinquent on August 30, 1954. This order requested petitioner to report by 9:15 a.m. At 9:10 a.m., the petitioner, his stepfather and Mr. Vaughn, a Sacramento attorney, appeared at the local board and requested petitioner's exemption from military service on the grounds that he is an alien entitled to such exemption under the terms of a treaty between Italy and the United States. Their attention was called to the provisions of Section 315 of the Immigration and Nationality Act, which they all read, and petitioner was given Form C-294 "Application by Alien for Exemption from Military Service in the Armed Forces of the United States." While at the draft board, petitioner called attention to the fact that his induction notice had the word "Delinquent" on it and that this was objectionable to him since he was not a delinquent. He was informed that he was being processed as a delinquent at the request of the U. S. Attorney. Petitioner thereupon stated, "Well, nobody is going to push me around" and signed the Form C-294.

The facts were again called to the attention of the U. S. Attorney who again declined prosecution stating that while he did not feel that the petitioner acted in entire good faith, his claiming exemption as an alien reduced the possibility of his ever becoming a citizen of this country and that that would ultimately be sufficient punishment under the circumstances. Subsequently, the Draft Board, in accord-

ance with Selective Service Regulation No. 1622.42 (c), placed petitioner in a classification 4-C and exempted him from military service.

On January 31, 1956, the petitioner appeared at his draft board with a written letter signed by him alleging misunderstanding of his Application for Exemption from Military Service previously executed by him requesting consideration by the local board for his acceptance into the military service. To support this statement he also signed an application for voluntary induction the same date. On February 14, 1956, petitioner appeared before his draft board and requested that he be placed in Classification I-A so that he might go into the armed forces. He was ordered to report for induction on March 7, 1956. Following due process of this induction procedure, he was inducted into the United States Navy on March 7, 1956, at San Francisco, California, under Service Number 485-25-93.

The treaty referred to is the Treaty of Friendship, Commerce, and Navigation Between the United States of America and the Italian Republic, signed at Rome, Italy, on February 2, 1948, and which entered into force on July 26, 1949. (63 Stat. 2255; TIAS 1965; 79 UNTS 171.)

The pertinent part of this Treaty is Article XIII, which provides as follows:

Article XIII.

1. The National of each High contracting Party shall be exempt * * * from compulsory training or

service in the armed forces of the other High Contracting Party and shall be also exempt from all contributions in money or in kind imposed in lieu thereof.

S. S. regulation No. 1622.42(c), under which this petitioner was exempted provided:

In Class 4-C shall be placed any registrant who is an alien and who is certified by the Department of State to be or otherwise establishes that he is, exempt from military service under the terms of a treaty or international agreement between the United States and the Country of which he is a national.

This regulation was implemented by Local Board Memorandum No. 39, as amended April 24, 1953, and issued by the National Headquarters of the Selective Service System, Washington, D. C. The text as here pertinent is as follows:

Local Board Memorandum No. 39.

Issued: November 6, 1951.

As Amended: April 24, 1953.

Subject: Classification of Treaty Aliens.

1. Purpose—

(a) Section 1622.42(c) of the Selective Service Regulations, which was prescribed by the President on September 25, 1951, provides that any registrant who is an alien and who is certified by the Department of State to be, or otherwise establishes that he is, exempt from military service under the terms of

a treaty or international agreement between the United States and the country of which he is a national shall be placed in Class IV-C.

(b) Section 315 of the Immigration and Nationality Act, which became effective on December 24, 1952, provides in pertinent part that “* * * any alien who applies or has applied for exemption * * * from training or service in the armed forces * * * of the United States on the ground that he is an alien, and is or was relieved * * * from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States and that “The records of the Selective Service System * * * shall be conclusive as to whether an alien was relieved * * * from such liability for training or service because he was an alien.”

(c) The purpose of this Local Board Memorandum is (1) to list the countries with which the United States has treaties exempting nationals thereof from military service; (2) to furnish information as to the evidence which must be submitted by or on behalf of a registrant who is a national of one of the countries so listed in order for him to be considered eligible for classification in Class IV-C under the provisions of Section 1622.42(c) of the regulations, and (3) (not pertinent).

2. List of Countries With Which the United States Has Treaties—

Any registrant, except a special registrant, who establishes to the satisfaction of his local board that

he is an alien and a citizen or national of one of the following countries is entitled to classification in Class IV-C under the provisions of Section 1622.42 (c) of the regulations, if he desires such classification, regardless of whether he has been admitted to the United States for permanent residence or is in the United States in a status other than that of a permanent resident, and regardless of whether he has declared his intention to become a citizen of the

United States:

Argentina

Austria

Costa Rica

China

El Salvador

Estonia

Germany

Honduras

Ireland

Italy

Latvia

Liberia

Norway

Paraguay

Siam

Spain

Switzerland

Yugoslavia

3. Evidence to be Considered—

(a) (1) In view of the provisions of Section 315 of the Immigration and Nationality Act, the Selec-

tive Service System should, in fairness to its registrants, make sure that an alien is not exempted from military service because of his alien status unless he personally desires such exemption. It is also important, as a matter of fairness to him, that he be fully advised as to the provisions of Section 315 of the Immigration and Nationality Act.

(2) Local boards should therefore require every alien who desires exemption from military service under a treaty to sign a statement that he requests exemption from military service on the ground that he is an alien claiming exemption under a treaty. As a matter of information to the registrant, it is desirable that the provisions of Section 315 of the Immigration and Nationality Act should appear on the same paper with such statement. The statement should then be filed in the registrant's cover sheet.

(3) Not Pertinent.

(4) (a) The alien's request for exemption from military service shall in every instance contain his Alien Registration Receipt Card number for purposes of identification.....

(b) Not pertinent.

(c) In the absence of any certification by the Department of State the local board should classify a treaty alien into Class IV-C when the evidence establishes to the satisfaction of the local board that the registrant is entitled to such classification except that the registrant shall not be so classified unless

the signed statement from the registrant required by subparagraph (a) is in the cover sheet. The passport or equivalent official document held by the alien registrant will ordinarily be sufficient to establish the country of which he is a citizen or a national. In any particular case where the local board deems that more information is necessary, the registrant will usually be able to obtain additional evidence as to his status either from the embassy or legation of the country of which he claims to be a national or from the Immigration and Naturalization Service.

Petitioner's application for exemption is contained on SS Form C-294 (Rev. 13 July, 53), as follows:

(Local Board No. 20)
Yolo County,
August 30, 1954,
317 2nd Street,
(Woodland, California.)

Application by Alien for Exemption From Military Service in the Armed Forces of the United States

I, Aldo Cerati, am a national of Italy; I am a registrant at Local Board No. 20, (City) Woodland, (County) Yolo, (State) California, my Selective Service Number is 4-20-35-264; my alien registration number is

A8 079 012;
I1 859 508.

1. I hereby apply for exemption from military service in the Armed Forces of the United States on the ground that I am an alien and am entitled to such exemption under the terms of a treaty between Italy and the United States.

2. I have read the provisions of Section 315, of the Immigration and Nationality Act of 1952, given below, and I fully understand the meaning thereof.

Dated at Woodland, California, this 30th day of August, 1954.

/s/ ALDO CERATI,

Signature of Registrant.

Section 315 of the Immigration and Nationality Act of 1952, provides: "Section 315(a) notwithstanding the provisions of Section 405(b), any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien, and is or was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States.

(b) The records of the Selective Service System or of the National Military Establishment shall be conclusive as to whether an alien was relieved or discharged from such liability for training or service because he was an alien."

3. Discussion and Authorities

Preliminarily, Congress has the power to enact a selective service or draft law either in time of war

or in time of peace (U. S. vs. Henderson, 180 F. 2nd 711, certiorari denied 70 S. Ct. 997), and it is within the power of Congress to call everyone to the colors, and no one under the jurisdiction of the sovereign nation, whatever his status, is exempt from military service except by the grace of the government (Local Draft Board No. 1 of Silver Bow County, Montana, vs. Connors, 124 F. 2nd 388.) There is then no question as to the constitutionality of the statute.

2. Treaty Aliens

As far as the treaty is concerned, the treaty exemption is from "compulsory training or service in the armed forces" which leaves open and unpre-scribed the procedure by which a person called to service may manifest his unwillingness to serve—if such be his state of mind—and thus obtain his release from any military obligation. As applied to a given individual, Article XIII is not automatic in the sense that the alien, if he is unwilling to render military service, may simply ignore a summons to service, or ignore the procedure set up or authorized by legislature enactment, whereby the alien may claim his exemption from compulsory military service by making a declaration to the proper authorities of his unwillingness to serve. Therefore, entirely consistent with the exemption contained in Article XIII of the treaty; Section 315 of the Immigration and Nationality Act provided that "any alien who applies for exemption from military service in the

armed forces of the United States on the ground that he is an alien and is released from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States." The permanent ineligibility part of the section is not in conflict with Article XIII of the treaty, and indeed nothing in the whole treaty purports to impose any limitation upon the power of the respective countries to formulate the conditions of eligibility for naturalization. (*Ballester vs. U. S.* 220 F. 2d 399, *Certiorari denied* October 10, 1955, 350 U. S. 830.)

As the Supreme Court stated in reference to a similar provision of a treaty with Switzerland: "That the statute unquestionably imposed a condition on exemption not found in the treaty does not mean that they are inconsistent. Not doubting that a treaty may be modified by a subsequent act of Congress, it is not necessary to invoke such authority here, for we find in this congressionally imposed limitation on citizenship nothing inconsistent with the purpose and subject matter of the treaty. The treaty makes no provision respecting citizenship." (*Moser vs. U. S.* 3414 S 41.) We do not stop to labor the point, for even if the bar to naturalization were inconsistent with the provisions of the treaty, it is perfectly well-settled that provisions of a subsequent act of Congress, may for purposes of domestic law, supercede inconsistent provisions of a prior treaty with a foreign country. (*Head Tax Money Cases*, 112 U. S. 580, *Clark vs. Allen*, 331 U. S. 503.)

3. Alleged Misunderstanding

There is no showing that the petitioner did not fully understand the effect of his avoidance of service in the military forces of the United States.

There is some intimation that he was acting in accordance with the advice of the Italian Consul. This was the claim of the petitioner in the case of *Savoretti vs. Small* (U. S. Court of Appeals for the Fifth Circuit, No. 16252, May 1, 1957). The Court disposed of this claim in the following language:

“Asserting that he was acting pursuant to directions from the Consul of Argentina in claiming his exemption from military service, he contends that this deprived his act of its voluntary character. If Small felt under the obligation to follow such directions, we cannot say that he would thereby be permitted to avoid the effect of his claimed right to escape duty to the United States. Whatever may be the effect of directions given by a consular officer to a national of his government, they cannot alter the status of an alien within the United States or change the operation of its laws as they effect such alien. There was no coercion such as would, in contemplation of law, deprive the act of Small of its voluntary character. Cf. *Petition for Naturalization of Edward Coronado*, D.C. E.D. N.Y., 132 F. Supp. 419, aff. 2 cir. 1955, 224 F. 2d 556; *In re Ballester*, D.C. Puerto Rico, 1954, 119 F. Supp. 629, aff. *Ballester vs. United States*, 1 cir. 1955, 220 F. 2d. 399.”

Here the petitioner, on the occasion of his signing the Claim of Exemption, was accompanied to the

Draft Board by his stepfather and an attorney at law. The provisions of Section 315 were called to all of their attentions at the time. Form C-294, which petitioner signed, contains the allegation that "I have read the provisions of Section 315 of the Immigration and Nationality Act of 1952, given below, and I fully understand the meaning thereof." The full text of the section is set out in the form itself. The petitioner could read and write English and had the benefit of the advice of his stepfather and his lawyer. Under the circumstances, any allegation of lack of misunderstanding would be entirely fatuous.

4. Subsequent Service

There remains the question as to what effect, if any, his subsequent military service has upon his claim for exemption. Section 315 contains no exception for treaty aliens and apparently intended none. "This section would seem clearly enough to constitute an absolute bar to citizenship, even for a person who had petitioned for naturalization prior to the effective date of the Act (the Immigration and Nationality Act of 1952), and regardless of whether exemption from military service was sought and obtained under the regulations prescribed by the President * * * or by virtue of an exemption contained in a treaty." *Ballester vs. U. S.* supra. When the petitioner in the *Ballester* case received his notice to report for preinduction examination, he at first sought unsuccessfully to invoke the provisions of a treaty between the United States and Spain,

without executing the prescribed Selective Service Form for claiming exemption. However, he was informed by his draft board that he would either have to execute the Form or else prepare for induction. On November 2, 1944, Ballester executed the Form and was placed by his draft board in category IV-C. A little over a year later he was reclassified IV-A (over the age of liability for military service). He filed a petition for naturalization on December 16, 1952. The question was whether in applying for relief from military service he rendered himself ineligible for subsequent naturalization. The Court held that Section 315 was an absolute bar and denied his petition. This decision was affirmed on appeal and certiorari denied on October 10, 1955, 350 U.S. 830.

When the petitioner in the case of *In Re Mauderli* 122 F. Supp. 241, reported to his draft board, he claimed exemption on the ground that he was a member of the Reserve of the Swiss Army. When he got nowhere with this claim, he signed the DSS Form requesting relief from military service as a treaty alien based on the provisions of a treaty between the United States and Switzerland. His application was granted and he was placed in Class IV-C. Subsequently, he sought the advice of the Swiss Legation in Washington, D. C. When he advised the Legation that he had signed the regular DSS Form, he was instructed to withdraw it and to file a revised form from which the provisions that the making of the claim for exemption disqualified him for United

States citizenship had been eliminated. He was unsuccessful in his attempt to withdraw the original form and thereupon filed the revised form.

Subsequently, he petitioned for naturalization. The Service recommended that the petition be denied, contending that he was ineligible under Section 315. The Court in denying the petition held that Section 315 was applicable and controlling and stated that "The intent of Congress by the adoption of this section and plain language of Section 315 was so clear that there is no need to labor the point." For, as pointed out in the case of *Petition of Valasquez*, 139 F. Supp. 790, "Congress nowhere provided for the withdrawal of a claim of exemption once filed, nor that the bar to citizenship would be removed by subsequent eligibility for service." (Valasquez attempted to withdraw his claim of exemption about two weeks later.)

Again in the case of *Brownell vs. Rasmussen*, 235 F. 2nd 527, the petitioner had a declaratory judgment in the District Court that he "is not ineligible for citizenship upon the ground that he claimed exemption" from liability for service under the Selective Training and Service Act of 1940, as a neutral alien and accordingly was not subject to deportation. The Court of Appeals reversed on the ground that the District Court was without jurisdiction to review a deportation order other than in a habeas corpus proceeding. The U. S. Supreme Court (350 U.S. 806) reversed the Court of Appeals without opinion and remanded the case for consideration on

the merits. One of the facts in the case was that the petitioner had offered himself for induction while the war was still going on. In denying the petition, the Court of Appeals (235 F. 2nd 527) held that the petitioner's action in this regard does not overcome the effect of his earlier application for relief. (It is noted that the Supreme Court granted certiorari on March 25, 1957.)

Finally, we feel that our conclusion in this case is buttressed by a decision handed down by the United States District Court for the Southern District of New York—Petition of S—No. 614454, October 21, 1953. In that case, the petitioner for naturalization was lawfully admitted for permanent residence. In 1950, he applied for and was granted exemption from military service on the grounds of alienage. Subsequently, he was inducted into the United States Armed Forces, under the provisions of the Universal Military Training and Service Act of 1951. In denying his petition, the Court said:

* * * there is, unfortunately, no discretion residing in this Court to grant his petition. Under Section 315 of the Immigration and Nationality Act, 8 U.S.C. 1426, as well as under 4(a) of the Selective Service Act of 1948, 50 U.S.C. App. 454(a), he is ineligible for citizenship. This petitioner's predicament might well merit legislative intervention. But this Court is powerless to aid him.

4. Pursuant to the provisions of Section 335 of the Immigration and Nationality Act, I hereby make

the following findings of fact and conclusions of law:

Findings of Fact

I.

That the petitioner is an alien and filed a petition for naturalization on February 6, 1957, under the General Provisions of the Immigration and Nationality Act of 1952;

II.

That the petitioner became subject to draft registration between June 8-13, 1953, under the provisions of the Universal Military Training and Service Act and in accordance with the terms of Presidential Proclamation No. 2799, of July 20, 1948;

III.

That the petitioner did not present himself for registration to his Draft Board until June 9, 1954;

IV.

That the petitioner was ordered by his Draft Board to report for induction on August 30, 1954, as a delinquent;

V.

That on August 30, 1954, petitioner applied for and was relieved from military service because of alienage;

VI.

That there is no showing that the petitioner did not fully understand the effect of his application for relief from military service;

VII.

That on February 14, 1956, petitioner appeared before his Draft Board and requested immediate induction;

VIII.

That on March 7, 1956, petitioner was inducted into the United States Navy at San Francisco, California.

Conclusions of Law

I.

That the petitioner did apply for and was exempted from training and service in the Armed Forces of the United States on the ground that he was an alien;

II.

That under the provisions of Section 315 of the Immigration and Nationality Act of 1952, petitioner is permanently ineligible to become a citizen of the United States.

5. It is recommended that this petition be denied upon the ground that the petitioner is ineligible for citizenship by virtue of the provisions of Section 315 of the Immigration and Nationality Act of 1952, having applied for and been relieved from military service because of alienage.

Respectfully submitted,

/s/ DANIEL H. LYONS,

Designated Naturalization
Examiner.

July 24, 1957.

[Endorsed]: Filed July 24, 1957.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated that the following documents may be introduced in this matter without objection as exhibits of the Government:

(1) Certified copy of Application for Voluntary Induction of the petitioner dated June 9, 1954;

(2) Certified copy of Order to Report for Induction of the petitioner, dated August 30, 1954.

JACKSON & HERTOGS,

By /s/ GORDON G. DALE;

IMMIGRATION & NATURALIZATION SERVICE,

By /s/ DANIEL H. LYONS.

August 29, 1957.

Selective Service System Application for Voluntary Induction

I hereby apply for voluntary induction into the Armed Forces of the United States under the provisions of the Universal Military Training and Service Act, as amended. For this purpose, I waive all rights of personal appearance and appeal if I am classified as available for service, and I consent to

my induction at any time convenient to the Government.

My Selective Service number is 4-20-35-264.

My Local Board is No. 20 at 317 2nd St., Woodland, Calif.

I was born June 8, 1935.

My mailing address is Rt. 2, Box 5948, West Sacramento.

/s/ ALDO CERATI,
(Signature of registrant)

(Date of application): 6-9-'54.

“Received: June 9, 1954, Sacramento Local Board Gr.”

Certified a True Copy.

Selective Service System
Order to Report for Induction

Local Board No. 20

Delinquent

Yolo County

26 August, 1954.

Aug. 26, 1954

317 2nd St.,

Woodland, California

The President of the United States,

To: Aldo Cerati.

(Selective Service Number): 4-20-35-264.

Mailing address: Rt. #1, Box 5948, West Sacramento, California.

Mailing address: Rt. #1, Box 5948, West Sacramento, California.

Greeting:

Having submitted yourself to a Local Board composed of your neighbors for the purpose of determining your availability for service in the Armed Forces of the United States, you are hereby ordered to report to the Local Board named above at Pacific Greyhound Bus Lines, 713 Main Street, Woodland, California (Monday), at 9:15 a.m., on the 30th of August, 1954, for forwarding to an induction station.

/s/ MARION J. BAILEY,
Clerk of Local Board.

Important Notice

If you have had previous military service, bring your service records with you. If you wear glasses, bring them with you.

This Local Board will furnish transportation to the induction station where you will be examined, and, if accepted for service, you will then be inducted into a branch of the Armed Forces. If you are not accepted, return transportation will be provided.

Persons reporting to the induction station in some instances are found to have developed disqualifying defects since being examined and may be rejected for these or other reasons. It is well to keep this in mind in arranging your affairs, to prevent any un-

due hardship if you are rejected at the induction station. If you are employed, you should advise your employer of this notice and of the possibility that you may not be accepted at the induction station. Your employer can then be prepared to replace you if you are accepted, or to continue your employment if you are rejected.

Wilful failure to report promptly to this Local Board at the place specified above and at the hour and on the day named in this Order is a violation of the Universal Military Training and Service Act, as amended, and subjects the violator to fine and imprisonment. You must keep this form and bring it with you when you report to the Local Board. Bring with you sufficient clothing for 3 days.

If you are so far removed from your own Local Board that reporting in compliance with this Order will be a serious hardship and you desire to report to a Local Board in the area in which you are now located, go immediately to that Local Board and make written request for transfer of your delivery for induction, taking this Order with you.

Certified a True Copy.

[Endorsed]: Filed August 29, 1957.

In the United States District Court for the Northern District of California, Southern Division

No. 128,368

In the Matter of:

ALDO CERATI, Petition for Naturalization

ORDER DENYING PETITION
FOR NATURALIZATION

The Immigration and Naturalization Service recommends denial of the petition of Aldo Cerati for naturalization on the ground that he is statutorily ineligible for naturalization because he applied for and was granted exemption as an alien from service in the Armed Forces of the United States.

Petitioner is a native of Italy. In 1951, when he was 16 years of age he was admitted to the United States for permanent residence. On attaining his eighteenth birthday in June, 1953, he failed to register for the draft as required by the Universal Military Training and Service Act, 62 Stat. 604, 50 USC Appendix §§ 451 et seq. and the regulations promulgated thereunder. On June 9, 1954, he registered with his local board, explaining that he had not previously been aware of his responsibilities under the Universal Military Training Act. Prosecution for the delinquent registration was declined by the United States Attorney upon the understanding that petitioner would accept immediate induction. Petitioner filed a request for immediate induction with his local board, and after examination,

was advised by the board that he was acceptable for military service. A few days thereafter, petitioner applied for a deferment on the ground that he was an indispensable employee of his stepfather's business. The deferment was denied and he was ordered to report for induction on August 30, 1954. On that day he appeared with his stepfather and an attorney at the office of the local board and requested exemption from military service pursuant to a treaty between the United States and Italy. Petitioner's attention was called to Section 315 of the Immigration and Nationality Act of 1952, 66 Stat. 242, 8 USC 1426 which provides that any alien who applies for and is granted exemption from service in the armed forces on the ground that he is an alien shall be permanently ineligible for citizenship. Petitioner then executed Form C-294 "Application by Alien for Exemption from Military Service in the Armed Forces of the United States," on the face of which Section 315 is set forth in full. His local board thereafter exempted him from military service as an alien.

About a year and a half later, on January 31, 1956, petitioner filed with his local board a request for voluntary induction and a letter claiming that he had misunderstood his Application for Exemption from Military Service. In accordance with his request, petitioner was subsequently inducted into the United States Navy, in which he is now serving.

Petitioner urges that because of his present active service in the armed forces of the United States,

Section 315 of the Immigration and Nationality Act of 1952 does not bar his naturalization.

Section 315 states that: "any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien, and is or was relieved or discharged from such training on such ground, shall be permanently ineligible to become a citizen of the United States." Petitioner falls squarely within the statute. He filed a considered application for exemption on the ground of alienage and on the strength of such application was relieved from service in the armed forces on the very day he had been ordered to report for induction.

The statute makes no provision for the restoration of eligibility for citizenship in the event an alien, who has been granted exemption from service, subsequently enters the armed forces. Nothing has been called to the attention of the Court which would indicate that the Congress intended that an exempted alien may regain his eligibility for citizenship by service in the armed forces at such time as he sees fit.

This is not a case of involuntary conduct held to be remediable in analogous situations arising under the immigration and nationality laws. e.g., *Delgado v. Carmichael*, 332 U.S. 388 (1947); *Morizumi v. Acheson*, 101 F. Supp. 976 (N.D., Calif. 1951). Nor, is it a case of action taken under a misappre-

hension of its consequences and promptly retracted. The facts of this case show that petitioner deliberately and consciously elected to take the step which shut the door to future citizenship. Thus Section 315 must be applied.

The petition of Aldo Cerati for naturalization is denied.

Dated: September 25, 1957.

/s/ LEWIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed September 26, 1957.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Whereas, the Petitioner has appealed to the United States Circuit Court of Appeals, for the Ninth Circuit from the judgment of this court entered.

Now, Therefore, in consideration of the premises and of such appeal, the undersigned, United Pacific Insurance Company, a corporation duly organized and existing under the laws of the State of Washington, and duly authorized to transact a general surety business in the State of California, does undertake and promises on the part of the Petitioner, to secure the payment of costs if the appeal is dismissed, or the judgment affirmed, or such

costs as the Appellate Court may award if the judgment is modified, not exceeding the sum of Two Hundred-Fifty and No/100 (\$250.00) Dollars, to which amount it acknowledges itself bound.

It is expressly agreed by the Surety that in case of a breach of any condition hereof the above-entitled Court, may proceed summarily in the above-entitled action in which this bond is given, to ascertain the amount which the Surety is bound to pay on account of such breach and render judgment therefor against the Surety and award execution therefor, all as provided by and in accordance with the intent and meaning of Section 73C of the Federal Rules of Civil Procedure.

In Witness Whereof, the corporate seal and name of the said Surety Company, it hereto affixed and attested at San Francisco, California, by its duly authorized officer, this 22nd day of November, 1957.

UNITED PACIFIC
INSURANCE COMPANY,

By /s/ M. CULLEN,
Attorney-in-Fact.

State of California,
City and County of San Francisco—ss.

On November 22, 1957, before me, Mary Black, a Notary Public in and for said City, County, and State, personally appeared M. Cullen, known to me

to be the person who executed the within instrument as Attorney-in-Fact on behalf of the United Pacific Insurance Company, and acknowledged to me that said corporation executed the same.

[Seal] /s/ MARY BLACK,
Notary Public in and for Said
City, County, and State.

My Commission Expires November 12, 1960.

[Endorsed]: Filed November 22, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given this 22nd day of November, 1957, that Aldo Cerati hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order of this Court which was filed and entered on the 26th day of September, 1957, in favor of the defendant and against the said Aldo Cerati, petitioner.

JACKSON & HERTOGS,
Attorneys for Petitioner,

By /s/ GORDON G. DALE.

[Endorsed]: Filed November 22, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK
TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are originals and copies of papers filed in this Court in the above-entitled matter and constitute the record on appeal herein, as designated by counsel for the appellant:

Photostate copy of petition for Naturalization.

Order Denying Petition for Naturalization.

Findings of Fact, Conclusions of Law and Recommendation of Naturalization Examiner.

Stipulation for Introduction of Documents at Hearing.

(a) Copy of Application of Voluntary Induction.

(b) Copy of Order to Report for Induction.
Notice of Appeal.

Bond on Appeal.

Designation of Record on Appeal.

Respondent's Exhibits A, B, C, D, E, and F.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 30th day of December, 1957.

[Seal]

C. W. CALBREATH,
Clerk.

By /s/ MARGARET P. BLAIR,
Deputy Clerk

[Endorsed]: No. 15839. United States Court of Appeals for the Ninth Circuit. Aldo Cerati, Appellant, vs. Bruce G. Barber, District Director, Immigration and Naturalization Service, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed December 30, 1957.

Docketed January 6, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15839

ALDO CERATI,

Appellant,

vs.

BRUCE G. BARBER, as District Director, San
Francisco District, Immigration and Naturali-
zation Service,

Appellee.

DESIGNATION OF RECORD TO BE INCOR-
PORATED IN TRANSCRIPT ON APPEAL

Appellant, Aldo Cerati, by and through his at-
torneys, Jackson and Hertogs, in the above-entitled
matter (in accordance with Rule 75(a) of the Fed-
eral Rules of Civil Procedure and Rule 75(a) of
the General Equity Rules, hereby designates the
entire record in the above-entitled matter to be
included in the Transcript on Appeal on its pend-
ing appeal from the judgment made, filed and en-
tered in said matter September 26, 1957.

Dated: January 7, 1958.

JACKSON & HERTOGS,
Attorneys for Appellant,

By /s/ JORDON G. DALE.

[Endorsed]: Filed January 8, 1958.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY IN THE APPEAL OF THE ABOVE-ENTITLED MATTER

Comes now, Aldo Cerati, by and through his attorneys, Jackson & Hertogs, and files herein the Statement of Points on which appellant intends to rely in the appeal of the above-entitled matter:

I.

That the District Court erred in concluding that one serving on active duty with the Armed Forces of the United States is ineligible to citizenship because of Section 315 of the Immigration and Nationality Act of 1952 (66 Stat. 242, 8 U.S.C. 1426).

II.

That the District Court erred in denying appellant's petition for naturalization.

Dated: January 7, 1958.

JACKSON & HERTOGS,
Attorneys for Appellant,

By /s/ GORDON G. DALE.

